

FILED
08-24-2022
CIRCUIT COURT
DANE COUNTY, WI
2022CV002127
Honorable Jacob Frost
Branch 9

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

DANE COUNTY

ELIZABETH FALK
501 Glenwood Avenue
McHenry, IL 60051

Plaintiff,

v.

FLEET FARM LLC
a foreign LLC,
c/o CT Corporation System
301 S. Bedford Street, Suite 1
Madison, WI 53703,

ABC INSURANCE COMPANY,
a fictitious insurance corporation,

Defendants,

WELLS FARGO & COMPANY HEALTH PLAN
a foreign insurance corporation,
c/o Corporate Secretary
Wells Fargo & Company
MAC D1053-300
301 South College Street
Charlotte, NC 28202,

Subrogated Defendant.

Case No.:

Case Code: 30107

SUMMONS

THE STATE OF WISCONSIN
TO EACH PERSON NAMED ABOVE AS A DEFENDANT:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court

may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is 215 S. Hamilton, Room 1000, Madison, WI 53703, and to Eric J. Ryberg, plaintiff's attorney, whose address is 150 East Gilman Street, Suite 2000, Madison, Wisconsin 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future and may also be enforced by garnishment or seizure of property.

Dated this 24th day of August, 2022.

HABUSH HABUSH & ROTTIER S.C.[®]

Electronically signed by Eric J. Ryberg

Eric J. Ryberg

State Bar No.: 1057331

Attorneys for Plaintiff

150 E. Gilman St. #2000

Madison, WI 53703

(608) 255-6663

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COMPLAINT

The plaintiff, Elizabeth Falk, by her attorneys, Habush Habush & Rottier S.C.®, hereby alleges the following as a Complaint against the defendants:

1. The plaintiff, Elizabeth Falk, is an adult resident of the state of Illinois who currently resides at 501 Glenwood Avenue, McHenry, Illinois 60051.

2. The defendant, Fleet Farm LLC, is, upon information and belief, a self-insured foreign Limited Liability Company whose registered agent for service of process is CT Corporation System, 301 S. Bedford Street, Suite 1, Madison, Wisconsin 53703 and which was, at all times material hereto, the owner of the forklift described below being operated by its employee.

3. The defendant, ABC Insurance Company, is a fictitious insurance corporation, whose name and address is unknown. Upon information and belief, at all times material hereto, ABC Insurance Company had in effect one or more policies of liability insurance covering the defendant, Fleet Farm LLC, its agents, servants, and employees. ABC Insurance Company's identity is unknown and a fictitious name is used herein pursuant to Wis. Stat. § 807.12.

4. The subrogated defendant, Wells Fargo & Company Health Plan, is a foreign employee health plan duly organized and existing under and by virtue of the law of the State of Illinois, whose registered agent for service of process is Corporate Secretary, Wells Fargo & Company, MAC D1053-300, 301 South College Street, Charlotte, North Carolina 28202. Wells Fargo & Company Health Plan is a proper party to this action pursuant to §803.03 of the Wisconsin Statutes by virtue of its payment of medical expenses to or on behalf of the plaintiff, Elizabeth Falk.

5. On or about September 14, 2019, at around 8:00pm, Elizabeth Falk was a customer at the Deforest location of Fleet Farm LLC at 4630 Dalmore Road, Deforest, Wisconsin, when a Fleet Farm employee drove a forklift too close to Ms. Falk as she was looking at items on the shelf, causing her to trip and fall.

6. At the time and place described above, and immediately prior thereto, the defendant, Fleet Farm LLC, personally and through its employees, including the employee described above, was negligent and that negligence was a substantial factor and proximate cause of the incident described above and all of the injuries and damages suffered by the plaintiff, Elizabeth Falk.

7. At the time and place described above and immediately prior thereto, the defendant, Fleet Farm LLC, personally and through its employees, failed to construct, maintain and repair the premises, failed to adopt and use methods and processes reasonably adequate to make the place safe, and failed to do every other thing reasonably necessary to protect the life, health, safety, and welfare of frequenters, all in violation of the safe place statute, Wis. Stat. § 101.11.

8. The failure of the defendant, Fleet Farm LLC, to maintain its premises in as safe a manner as the nature of the premises would reasonably permit and the failure to otherwise comply with the safe place statute, Wis. Stat. § 101.11, as described above, was a substantial factor and proximate cause of the incident described above and all of the injuries and damages suffered by the plaintiff, Elizabeth Falk.

9. At all times material hereto, the driver of the forklift at the time of the incident described above was acting within the course and scope of his employment with Fleet Farm LLC and engaged in the work of his employer, Fleet Farm LLC.

10. By virtue of its status as the employer of the forklift driver described above, the defendant, Fleet Farm LLC, is liable to the plaintiff, Elizabeth Falk, under the doctrine of *respondeat superior*.

11. As a direct result of the incident described above, the plaintiff, Elizabeth Falk, suffered severe injuries to her mind and body, including, but not limited to, her left knee and both hands. These injuries have in turn caused her to experience pain and suffering, interference with her normal activities, interference with her ability to enjoy life, interference with her ability to earn income, and have caused her to incur lost wages, medical and other expenses, all of which are permanent in nature and will continue in the future.

12. By virtue of its policy or policies of insurance providing liability coverage to the defendant, Fleet Farm LLC, and its agents, servants, and employees, the defendant, ABC Insurance Company, is directly liable to the plaintiff, Elizabeth Falk, for all of her injuries and damages.

WHEREFORE, plaintiff demands judgment as follows:

- A. Judgment in favor of the plaintiff, Elizabeth Falk, and against the defendants, Fleet Farm LLC, and ABC Insurance Company, jointly and severally, in an amount sufficient to constitute fair and reasonable compensation for all of her injuries and damages;
- B. For a declaration that the plaintiff, Elizabeth Falk, is not obliged to pay any sums to the subrogated defendant, Wells Fargo & Company Health Plan;
- C. For costs, disbursements and attorney's fees incurred in this action; and
- D. For whatever further relief the Court deems just and proper.

**PLAINTIFF DEMANDS THAT ALL ISSUES RAISED ABOVE BE TRIED
BEFORE A JURY OF TWELVE PERSONS.**

Dated this 24th day of August, 2022.

HABUSH HABUSH & ROTTIER S.C.[®]

Electronically signed by Eric J. Ryberg

Eric J. Ryberg

State Bar No.: 1057331

Attorneys for Plaintiff

150 E. Gilman St. #2000

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